

UNITED STATES DISTRICT COURT

★ MAR 28 2012 ★

EASTERN DISTRICT OF NEW YORK

LONG ISLAND OFFICE

-----X
GABRIEL FRANCIS,

Civil Action No.:

SUMMONS ISSUED

CV 12 1520

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT**

AMON, CH.J.

Plaintiff,
-against-

HSBC BANK USA, N.A.,

DEMAND FOR JURY TRIAL

Defendant(s).
-----X

GOLD, M.

Plaintiff GABRIEL FRANCIS ("Plaintiff"), by and through his attorneys, M. Harvey Rephen & Associates, P.C., as and for its Complaint against the Defendant HSBC BANK USA, N.A., hereinafter referred to as Defendant, respectfully sets forth, complains and alleges, upon information and belief, the following:

INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf for damages and declaratory and injunctive relief arising from the Defendant's violation(s) under Title 47 of the United States Code, §227 commonly known as the Telephone Consumer Protection Act (TCPA).

PARTIES

2. Plaintiff is a resident of the State of New York, residing at 178 Lott St., Brooklyn, NY 11226. The Plaintiff is a PERSON as referred to in the TCPA.

3. Defendant HSBC BANK USA, N.A. is a division of an international corporation, with its address at One HSBC Center, Buffalo, NY 14203.

4. The Defendant provides goods and services to customers who reside in New

York State, and conducts and transacts business throughout New York State.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this matter pursuant to 28 USC §1331, as well as 15 USC §1692 et seq. and 28 U.S.C. §2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C §1367(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) (2).

FACTUAL ALLEGATIONS

7. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “6” herein with the same force and effect as if the same were set forth at length herein.

8. On information and belief, on a date better known to Defendant, Defendant began its collection efforts using an autodialer and prerecorded messages from November 2010 through a good part of 2011 with a campaign of communicating with the Plaintiff by calling his cell phone (646.228.4949) 288 times according to subpoenaed Sprint phone records.

9. The Plaintiff's application contained his home phone number as his telephone contact. The Plaintiff did not give the Defendant permission to call his cell phone.

10. Despite the Plaintiff's not giving his permission to be contacted on his cell phone, the Defendant continued its campaign to call the Plaintiff's cell phone after the Plaintiff received the first five calls from the Defendant on December 10th, 2010 and then called the Plaintiff back and requested they not call him again on his cell phone.

11. With the autodialer calls and prerecorded messages the Defendant violated 47 USC §227(b)(A)(iii) which prohibits using any automated telephone dialing system or an artificial prerecorded voice to any telephone number assigned to a cellular telephone service when calling to the plaintiff's cell phone.

12. The Defendant therefore willfully violated the TCPA 283 times after being requested to not call the Plaintiff's cell phone.

FIRST CAUSE OF ACTION
(Violations of the TCPA)

13. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "12" herein with the same force and effect as if the same were set forth at length herein.

14. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the TCPA, including but not limited to 47 USC §227(b)(A)(iii).

15. As a result of Defendant's violations of the TCPA, Plaintiff has been damaged and is entitled to damages in accordance with the TCPA.

DEMAND FOR TRIAL BY JURY

16. Plaintiff GABRIEL FRANCIS hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff GABRIEL FRANCIS respectfully prays that judgment be entered against the Defendants HSBC BANK USA, N.A.:

A. For statutory damages provided and pursuant to 47 USC

§227(c)(2)(G)(3)(B).

B. A declaration that the Defendant's practices violated the TCPA.

C. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York
March 26, 2012

Respectfully submitted,

By: 
M. Harvey Rephen, (MR3384), Esq.
M. HARVEY REPHEN & ASSOCIATES, P.C.
708 Third Avenue, 6th Floor
New York, New York 10017
Phone: (212) 796-0930
Facsimile: (212) 330-7582

Attorney for the Plaintiff Gabriel Francis

To: HSBC Bank USA, N.A.
One HSBC Center
Buffalo, NY 14203

Clerk,
United States District Court, Eastern District of New York
(For Filing Purposes)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CASE NO.:

GABRIEL FRANCIS,

Plaintiff(s),

-against-

HSBC BANK USA, N.A.,

Defendant(s).

COMPLAINT

*M. HARVEY REPHEN & ASSOCIATES, P.C.
708 Third Avenue, 6th Floor
New York, New York 10017
Phone: (212) 796-0930
Facsimile: (212) 330-7582*
